

EXECUTIVE SESSION FORMAT

The next item on the agenda is _____. This item [must] [may] be discussed in an executive session. The legal authority for closing this portion of the meeting is North Dakota Century Code section(s) _____. The topic or purpose of this executive session is _____.

[Option 1, for meetings which must be closed:] At this time, we will convene in executive session.

[Option 2, for meetings which may be closed at the discretion of the governing body, but which are not required to be closed:] At this time, a motion would be in order to discuss the next topic in executive session rather than in an open meeting. Is there such a motion? . . . Any second? . . . Any discussion on the motion? . . . I'll call the roll. Motion carried.

The executive session will be recorded and all members of the governing body are reminded to limit their discussion during the executive session to the announced topic. Any collective decision, collective commitment, or other final action by the governing body must occur after it reconvenes in an open meeting, unless final action is specifically required by law to be taken during the executive session. [For meetings which are closed under N.D.C.C. § 44-04-19.1 for attorney consultation or discussion of contract negotiation strategy, add the following statement: The prohibition on taking final action during the executive session does not apply to providing guidance or instructions to our attorney or negotiator.]

We will now ask the members of the public who are attending the meeting to leave the room. We anticipate adjourning the executive session, and reconvening the open portion of the meeting, at approximately _____ [Time].

The minutes will show that the executive session began at _____ [Time] and was attended by _____.

[After the executive session] The minutes will show that the executive session was adjourned at _____ [Time]. The public has been invited to return to the meeting room and we are now back in open session.

This document has been prepared by the Office of Attorney General to assist governing bodies in complying with the procedural requirements in N.D.C.C. § 44-04-19.2 when an executive session is authorized. It is not intended to be the exclusive method by which a governing body may properly convene in executive session. A departure from the format in this document does not necessarily indicate that the governing body's procedure for convening in executive session failed to comply with N.D.C.C. § 44-04-19.2.

N.D.C.C. § 44-04-19.2. Confidential or closed meetings.

1. A governing body may hold an executive session to consider or discuss closed or confidential records.
2. Unless a different procedure is provided by law, an executive session that is authorized by law may be held if:
 - a. The governing body first convenes in an open session and, unless a confidential meeting is required, passes a motion to hold an executive session;
 - b. The governing body announces during the open portion of the meeting the topics to be discussed or considered during the executive session and the body's legal authority for holding an executive session on those topics;
 - c. The executive session is recorded under subsection 5;
 - d. The topics discussed or considered during the executive session are limited to those for which an executive session is authorized by law and that have been previously announced under this subsection; and
 - e. Final action concerning the topics discussed or considered during the executive session is taken at a meeting open to the public, unless final action is otherwise required by law to be taken during a closed or confidential meeting. For purposes of this subsection, "final action" means a collective decision or a collective commitment or promise to make a decision on any matter, including formation of a position or policy, but does not include guidance given by members of the governing body to legal counsel or other negotiator in a closed attorney consultation or negotiation preparation session authorized in section 44-04-19.1.
3. The remainder of a meeting during which an executive session is held is an open meeting unless a specific exemption is otherwise applicable.
4. The minutes of an open meeting during which an executive session is held must indicate the names of the members attending the executive session, the date and time the executive session was called to order and adjourned, a summary of the general topics that were discussed or considered that does not disclose any closed or confidential information, and the legal authority for holding the executive session.
5. All meetings of the governing body of a public entity that are not open to the public must be recorded electronically or on audiotape or videotape. The recording must be disclosed pursuant to court order under subsection 2 of section 44-04-18.11 or to the attorney general for the purpose of administrative review under section 44-04-21.1. The attorney general may not disclose to the public any recording received under this subsection and must return the recording to the governing body upon completion of the administrative review. The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential. Disclosure of the recording by a public servant except as provided in this subsection is a violation of section 12.1-13-01. All recordings under this subsection must be retained for a minimum of six months after the executive session that is the subject of the recording.